UT 03-4
Tax Type: **Use Tax**
Issue: **Use Tax On Aircraft Purchase**
Temporary Storage (Exemption)
Non-Resident Exemption

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
	)	**Docket No. 02-ST-0000**
v.	)	**IBT # 0000-0000**
	)	**NTL # 00-0000000000000**
ABC, INC.	)	
	)	
Taxpayer	)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Lawrence H. Weltman of Lewis, Rice & Fingersh, L.C. for ABC, Inc.

Synopsis:

ABC, Inc. ("taxpayer") is a Delaware corporation that purchased an airplane from a Swiss company and took possession of the plane on December 27, 1995 in Delaware. The taxpayer did not pay Illinois use tax on the purchase of the aircraft. The Department of Revenue ("Department") determined that the plane was purchased for use in Illinois and sent the taxpayer a Notice of Tax Liability for Illinois use tax. The taxpayer filed a timely protest to the Notice, arguing that the airplane was not used in Illinois. In the alternative, the taxpayer argues that the "temporary storage" exemption applies, or the

non-resident exemption applies. The parties filed a Joint Stipulation of Facts and briefs in support of their positions. They have requested that this matter be resolved based on their written submissions. After reviewing the documents presented, it is recommended that the Notice of Tax Liability be upheld.

FINDINGS OF FACT:

1. The taxpayer is a Delaware corporation. Prior to April 30, 1997, all of the taxpayer's stock was owned in trust. On April 30, 1997, the taxpayer's stock was sold to persons domiciled in Illinois. (Stip. #1, 2)

2. Prior to the sale of the stock, the taxpayer was not registered as an Illinois business and owned no assets in Illinois. (Stip. #3)

3. During the period of December 27, 1995 through April 1997, John Doe was the president of the taxpayer. Mr. Doe was also the sole trustee of the Trust that owned all of the stock of the taxpayer. (Joint Ex. #4)

4. XYZ Aircraft, Ltd., a Swiss company, sold the taxpayer an aircraft and delivered the aircraft to the taxpayer's representative on December 27, 1995 in Wilmington, Delaware. The aircraft was the taxpayer's principal asset from December 27, 1995 through April 30, 1997. (Stip. #2, 7)

5. On December 27, 1995, the aircraft was not eligible for unrestricted operation because it lacked a portion of its navigation and safety electronics and the interior of the passenger cabin. Until the installation of these items, the aircraft could only be operated under a "ferry permit" issued by the Swiss CAA and the U.S. Federal Aviation Administration. This permit allows flights only on a per trip basis for delivery, completion and repairs, with only pilots on board. (Stip. #8)

6. On December 27, 1995, the aircraft was flown from Wilmington, Delaware to Indianapolis, Indiana, where one of the XYZ factory representatives deplaned. Thereafter, it was flown to St. Louis, Missouri, where the taxpayer's representative, Mr. Doe, deplaned. On the same day, it was flown to Bloomington, Illinois for installation of navigation and safety electronics by Bloomington Avionics, a company unrelated to the taxpayer. (Stip. #9a, b)

7. On February 2 and 3, 1996, Bloomington Avionics personnel flew the aircraft twice for electronics tests. (Stip. #9c; Joint Ex. #4)

8. On February 4, 1996, after the installation of navigation and safety electronics, the contract pilot, Mr. Smith, flew the plane to St. Louis, where John Doe boarded. Mr. Doe piloted the plane back to Bloomington, where Mr. Smith deplaned. Mr. Doe immediately flew the plane to Wichita, Kansas for installation of the passenger cabin interior. (Stip. #9d)

9. On April 1, 1996, the installation of the passenger cabin interior was completed, but some adjustment of the navigation and safety electronics was necessary. A Bloomington Avionics technician flew commercially to Wichita, Kansas to complete the adjustments. On April 1, 1996, Mr. Doe flew the technician to Bloomington, Illinois, where the technician deplaned. Mr. Doe then flew the aircraft to Naples, Florida. At this time the aircraft was eligible for unrestricted operation. (Stip. #9e)

10. From April 1, 1996 through April 30, 1997, the plane was flown 237 times including 9 test flights that were taken out of Bloomington and returned to Bloomington.[1]

[1] According to the flight log submitted by the parties, a "flight" consists of one takeoff and one landing. (Joint Ex. #5)

Excluding the test flights, the plane landed in Illinois 65 times during this time period. (Joint Ex. #5; Taxpayer Ex. A)

11. On December 10, 2001, the Department issued a Notice of Tax Liability to the taxpayer that shows additional tax due in the amount of $38,377, plus interest and penalties, for use tax on the purchase of the plane on December 29, 1995. (Stip. #5, Joint Ex. #2)

CONCLUSIONS OF LAW:

The Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The word "use" means "the exercise by any person of any right or power over tangible personal property incident to the ownership of that property * * *." 35 ILCS 105/2. Section 12 of the Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the notice of tax liability issued by the Department "shall be prima facie proof of the correctness of the amount of tax due, as shown therein." 35 ILCS 105/12; 120/4.

Once the Department has established its prima facie case by submitting the notice into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. Id.

Use in Illinois

The taxpayer first argues that the aircraft was not used in Illinois because flights solely for the purpose of installing electronics, inspecting the aircraft, and performing warranty work do not constitute a taxable use. The taxpayer claims that from December 27, 1995 through at least April 1, 1996, the taxpayer did not have the ability to exercise any right or power over the aircraft. During this time period, the plane could only be operated under a "ferry permit." The taxpayer asserts that it could not control whether, when, or where warranty or inspection work would be done because this was dictated by the manufacturer and by FAA regulations. The taxpayer states that the decision to bring the aircraft into Illinois was beyond its control, as was the method and timing of the work done while the plane was in Illinois.

The taxpayer maintains that it did not have a right or power over the aircraft while it was in Illinois, and therefore the tax cannot be imposed with respect to the year 1995. The taxpayer notes, however, that it is possible that the tax might be properly imposed for a subsequent year, such as 1997, when the stock was sold to persons domiciled in Illinois and when the aircraft began being hangared in Illinois.

The taxpayer asserts that from April 1, 1996 through April 30, 1997, there were relatively few flights that landed in Illinois. The taxpayer claims that during this time period, there were a total of 87 flights, and other than those that were for warranty work, repair work or emergency landings, 11 were solely to drop off a contract pilot.[2] Of the others, only 8 were for miscellaneous purposes and their duration was only a few hours.

[2] The taxpayer's assertion that there were 87 flights is based on Taxpayer's Ex. A, which includes a flight log. On this log, the flights are grouped into "trips." For example, on May 10, 1996, the plane was flown from Bloomington to St. Louis, then to Midway, and then back to St. Louis. Although this was actually

Therefore, to the extent that there were some landings in Illinois, they were minor and the theory of *de minimis non curat lex* ("the law cares not for trifles") should apply; the use tax should, therefore, not be imposed.

The Department argues that on the same day that the taxpayer purchased the plane at retail, the taxpayer's contract pilot flew the aircraft into Illinois, where it stayed until February 4, 1996. Thereafter, the taxpayer regularly flew the plane into and out of Illinois, where the Department claims that the taxpayer currently maintains a place of business. The Department states that there were 120 flights between December 27, 1995 and April 30, 1997 that either originated or terminated in Illinois. The Department asserts that from December 27, 1995 until the Notice of Tax Liability was issued, the aircraft had only one owner, the taxpayer, and the transfer of stock is not relevant to the imposition of the use tax.

The Department contends that the taxpayer incorrectly refers to the tax being imposed for a specific year. The use tax is not assessed for use at a particular time or during a particular period. See Archer Daniels Midland Company v. Department of Revenue, 170 Ill.App.3d 1014 (1st Dist. 1988). The Department states that the tax is imposed upon the taxable sales price, and it is determined on the date of the retail sale; it is not assessed for a particular year, such as 1995, as the taxpayer suggests.

The Department believes that from the first day that the taxpayer owned the aircraft, it exercised its right or power over the plane by agreeing to have the navigation and safety electronics installed in Bloomington, Illinois. The taxpayer took steps in Illinois to insure that the aircraft complied with warranty and FAA schedules for repairs

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three flights, the taxpayer's log categorized this as one trip. The taxpayer's claim that there were 87 flights appears to really be a claim that there were 87 "trips."

and inspections. The Department argues that the taxpayer's contention that it could not control whether, when, or where the warranty or inspection work would be done is not supported by the stipulated facts.

The Department asserts that after April 30, 1997, the taxpayer maintained headquarters for the aircraft in Bloomington and registered it there with the FAA. The Department believes that an owner's decision concerning bringing the aircraft up to FAA commercial standards is an exercise of its "rights and powers." Finally, the Department contends that there is no *de minimus* principle in Illinois law.

In response, the taxpayer asserts that the Department, in its brief, misstated facts and made misleading arguments. For example, nothing in the stipulations indicates that the purchase was made at retail or that XYZ is a retail seller of aircraft. Also, the stipulations do not indicate that the taxpayer did or does maintain a place of business in Illinois. Furthermore, nothing in the stipulations indicates that the taxpayer "agreed" to the plane being outfitted to FAA specifications in Bloomington, Illinois as the Department suggests. Finally, the taxpayer claims that the allegation that there were 120 flights into and out of Illinois is an exaggeration because each flight that lands in a location must take off from that same location.

With respect to the year at issue, the taxpayer notes that the Motor Vehicle Use Tax Report, EDA-95, prepared by the Department indicates the "Purchase date" and the "Date brought into Illinois" were both December 29, 1995.[3] The taxpayer argues that if the aircraft was purchased in 1995 and first brought into Illinois in 2002, then the use tax clearly would not relate back to 1995 with interest payable from that date. The taxpayer

[3] The stipulations state that the aircraft was delivered to the taxpayer on December 27, 1995 and flown to Illinois on that same day.

states that there was no taxable "use" of the plane in 1995 or thereafter until perhaps 1997 when the stock of the taxpayer was sold to its current owners. The taxpayer maintains that although technically the same taxpayer owned the plane throughout the time period in question, the owners of the taxpayer have changed. Accordingly, it is important among the owners to determine the date on which activity occurred that gave rise to the Illinois use tax, if any. The taxpayer believes that but for the sale of its stock to its present owners, no claim for Illinois use tax would have been made.

Both parties have referred to facts that are not in the record. The taxpayer's claim that it did not have the ability to control the warranty or inspection work because this was dictated by the manufacturer and by FAA regulations is not part of the stipulations or documents supporting the stipulations. Also, the taxpayer's assertion that the decision to bring the aircraft into Illinois was beyond its control, as was the method and timing of the work done while the plane was in Illinois, is not part of the record. The stipulations simply state that the flights between December 27, 1995 and April 1, 1996 were for the purpose of having the electronics and passenger cabin completed. (Stip. #9)

Both parties refer to the fact that the taxpayer maintained headquarters for the aircraft in Bloomington after April 30, 1997, but this is not included in the stipulations. The EDA-95 simply shows an Illinois address for the taxpayer, and it does not indicate that Illinois is the taxpayer's place of business or that it is the headquarters for the plane. The stipulations state that on April 30, 1997 all of the taxpayer's stock was sold to persons domiciled in Illinois (Stip. #2), but they do not indicate where the aircraft was hangared before or after that date. The Department cited the official flight log for its

assertion that the taxpayer registered the plane in Illinois with the FAA, but the flight log does not indicate this.

As previously stated, the certified copy of the notice of tax liability issued by the Department is prima facie proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/4. The Department's prima facie case creates a rebuttable presumption that the taxpayer purchased the aircraft at retail from a retailer and then used it in Illinois. See Branson v. Department of Revenue, 168 Ill.2d 247, 262 (1995) (Department's establishment of a prima facie case operates, in effect, as a rebuttable presumption of all the elements of the liability). In order to rebut the presumption, the taxpayer must provide sufficient evidence to disprove the Department's determination. Id. In this case, the taxpayer must show that the aircraft was not purchased at retail from a retailer or that it was not used in Illinois.

The taxpayer has not specifically argued that the aircraft was not purchased at retail from a retailer other than to state that the Department's assertions regarding this are not in the record. Because the Department has established a prima facie case, the taxpayer has the burden of disproving this presumption. The Department does not have to prove these facts. The taxpayer failed to provide any credible evidence that the purchase was not made at retail from a retailer. Therefore, it has failed to rebut this presumption.

The question that remains is whether the plane was used in Illinois. The taxpayer argues that the aircraft was not used in Illinois from December 27, 1995 to April 1, 1996 because the aircraft was ineligible for unrestricted operation and was being repaired in order to fly without restrictions. For the time period after April 1, 1996, the taxpayer

claims that the flights into Illinois were *de minimus* and do not warrant assessing the use tax. The taxpayer notes, however, that it is possible that the tax might properly be imposed for a subsequent year, such as 1997, when the stock was sold to persons domiciled in Illinois and when the aircraft began being hangared in Illinois.

The taxpayer's claims are without merit. The taxpayer has failed to show that the airplane was not used in Illinois from December 27, 1995 to April 1, 1996. The taxpayer has cited cases from other states to support its contention that during preparation and repair periods, a taxpayer is deemed to not have the ability to exercise any indicia of ownership over property, and therefore has not used the property.[4] In Department of Revenue v. Yacht Futura Corporation, 510 So.2d 1047 (1st Dist. 1987), the Appellate Court of Florida determined that a newly purchased yacht brought to Florida for repairs was not used in Florida, even though the owner took the yacht for a five-day trip during the 85 day repair period. In Exxon Corporation v. Wyoming State Board of Equalization, 783 P.2d 685 (1989), *cert. denied*, 495 U.S. 910 (1990), the Supreme Court of Wyoming found that pipe that was purchased for installation in Wyoming but was first modified in Colorado was deemed to have its first use in Wyoming.

The Yacht Futura case is clearly distinguishable from the present case. In that case, when the yacht was delivered to the taxpayer, serious defects were discovered that were under warranty. The contract required the boat to be brought to Florida for the warranty repairs. The seller would not consent to warranty repairs at other boat yards. In

[4] It must first be noted that Illinois courts have determined that the decisions from other states are not binding on the courts of Illinois, but, where relevant, such decisions should be examined for such value as the court may find in them. Kroger Co. v. Department of Revenue, 284 Ill.App.3d 473, 481 (1st Dist. 1996), appeal denied, 171 Ill.2d 567 (1997). The weight to be given to decisions from other jurisdictions depends upon the persuasiveness of the reasoning that supports them. Johnson v. Country Life Insurance, Co., 12 Ill.App.3d 158, 163 (4th Dist. 1973).

the present case, nothing in the record indicates that the installation of the electronics had to be done in Bloomington, Illinois. The stipulations simply state that a contract pilot flew the plane to Bloomington for installation of navigation and safety electronics. (Stip. #9b) Nothing indicates that the electronics were under warranty or that Bloomington was the only place where they could be installed. Nothing indicates that the purchase contract required all repairs to be done in Bloomington. Furthermore, this record does not show that the taxpayer was not aware that the plane was ineligible for unrestricted operations when it purchased the plane. In Yacht Futura, the defects were discovered when the boat was delivered and the purchaser had no choice but to bring the boat to Florida for the repairs. In the present case, the taxpayer knew of the defects when it purchased the plane and had a choice concerning where to bring it for the repairs. The facts of these cases are not similar.

In Exxon Corporation, the taxpayer purchased pipe from a Texas vendor, and then the pipe was shipped from Japan to Colorado. In Colorado, the pipe was inspected, sand blasted, and coated with epoxy. After this was completed, the pipe was shipped to Wyoming and installed into a pipeline. The majority of the court found that the pipe was first used in Wyoming because the activities in Colorado were merely processes necessary to prepare the pipe for its intended use, i.e., its installation into the pipeline. Exxon Corporation at 688. The court also denied the taxpayer a credit for the use tax that it paid in Colorado because the Wyoming statute allows a credit only for sales tax paid in another State, not use tax. The court found that imposing the Wyoming use tax did not unconstitutionally burden interstate commerce. Exxon Corporation at 689-90.

The reasoning in the dissent written by Justice Urbigkit in Exxon Corporation is noteworthy because I believe it is more convincing than the majority opinion. Justice Urbigkit noted that the Wyoming legislature defined "use" to include "the exercise of **any** right or power over tangible personal property incident to ownership" (emphasis added). Exxon Corporation at 693. He stated that Exxon took possession of the pipe in Colorado by contract and exercised a power of ownership by contracting to have the pipe coated with epoxy in Colorado. Id. He, therefore, concluded that the pipe was first used in Colorado. He also stated that there is no constitutional basis, and it defies common sense, to find that Exxon must pay the Wyoming use tax on the basis that the tax paid in Colorado was a use tax and not a sales tax. If the tax paid in Colorado was a use tax, then how could the first use of the property be in Wyoming? Exxon Corporation at 694.[5]

A portion of Justice Urbigkit's reasoning applies to the present case. The Illinois legislature similarly defines "use" as "the exercise by any person of **any** right or power over tangible personal property incident to the ownership of that property" (emphasis added). 35 ILCS 105/2. On December 27, 1995, the taxpayer exercised its power of ownership over the aircraft by contracting to have the plane's electronics installed in Bloomington, Illinois. At that time, Bloomington Avionics may have had the right to possess the airplane, but it did not have the right of ownership. The right of ownership

[5] It is also worth noting the case of Burlington Northern Railroad Company v. Wyoming State Board of Equalization, 820 P.2d 993 (1991), where the Supreme Court of Wyoming addressed an issue that is very similar to the one raised in Exxon Corporation, and the court reached a contrary conclusion. In Burlington Northern, the taxpayer's trains stopped in Wyoming to be inspected. If an inspection revealed that a wheel assembly needed to be repaired, it was removed from the car, shipped to Nebraska, and rebuilt with new or used parts. The new parts were received and stored in Nebraska until they were used to repair the wheel assemblies. The taxpayer did not pay sales or use tax on the purchase of the new parts. The repaired wheel assemblies were then returned to Wyoming and placed on the cars. The issue raised by the parties was whether the first use of the new parts occurred in Nebraska or Wyoming. If the first used occurred in Wyoming, then the taxpayer owed use tax on the new parts. The majority of the court found that the new parts were first used in Nebraska when they were installed as component parts in the wheel assemblies.

remained with the taxpayer. The taxpayer exercised its right of ownership by directing Bloomington Avionics install the electronics.

"The use tax is not a tax which arises out of the use or operation of tangible personal property, but rather it is a tax placed upon the exercise of powers or rights incident to ownership. [citations omitted] Therefore, mere use without rights of ownership cannot be taxed, but the exercise of power over personal property incident to ownership thereof which converts the product into another form * * * is a taxable use in Illinois." Time, Inc. v. Department of Revenue, 11 Ill.App.3d 282, 288 (1st Dist. 1973). Although Bloomington Avionics had access to the plane and could use it during the period that it was in its possession, the taxpayer exercised its power of ownership over the aircraft by allowing Bloomington Avionics to perform work on the plane to make it eligible for unrestricted operations. As the owner of the plane, the taxpayer had the ability and authority to allow or to not allow a business to perform work or install equipment on the aircraft. The taxpayer chose to purchase an aircraft that had only a ferry permit, and it chose to have the electronics installed in Bloomington. The power to allow property to be used in a manner that benefits the owner is a power incident to the ownership of that property. The taxpayer's exercise of that power in Illinois results in the imposition of the use tax.

An analogous situation would be if a person purchased a used car and immediately brought it to a mechanic for additional work or repairs. The use tax would be determined as of the date that the purchaser acquired ownership. The amount of time that is taken to repair the vehicle does not affect the use tax obligation.

Burlington Northern at 996. The dissent believed that the facts in the case were indistinguishable from those in Exxon Corporation. Burlington Northern at 997-998.

In addition to the fact that the plane was used in Illinois beginning December 27, 1995, the flights into Illinois after the plane became eligible for unrestricted operation were not *de minimus* as the taxpayer suggests. Beginning on April 1, 1996, the plane landed in Illinois 65 times out of 228 flights.[6] Approximately 28.5% of the flights landed in Illinois. The plane landed in Illinois more than in any other state. This use of the plane in Illinois cannot be deemed to be *de minimus*.

The taxpayer's suggestion that the tax should be imposed for a subsequent year, such as 1997, is also without merit. The fact that in 1997 the stock was sold to persons domiciled in Illinois does not affect the application of the tax. The aircraft was purchased by the taxpayer, which is a corporation, and the corporation is responsible for the use tax when it purchases the aircraft, regardless of who owns its stock. Stock is frequently bought and sold on a regular basis, but this does not affect a corporation's use tax obligations. Furthermore, the fact that the aircraft allegedly began being hangared in Illinois in 1997 is relevant but not determinative of the imposition of the tax. It is noteworthy that the taxpayer has not mentioned and the stipulations do not indicate where the aircraft was hangared prior to 1997. The taxpayer did not provide information concerning the location of its principal place of business during this time period. Although the taxpayer claims that the aircraft was not used in Illinois until 1997, the taxpayer has not suggested where the use occurred. Nevertheless, the evidence supports a finding that the taxpayer failed to meet its burden of proving that the aircraft was not used in Illinois.

[6] This number of flights is taken from the flight log submitted by the parties (Joint Ex. #5), and it excludes flights that were test flights (e.g., flight on 4/5/96 was a test flight out of Bloomington). The same amount of flights is listed on the flight log that is attached to Taxpayer's Ex. A.

Temporary Storage Exemption

Alternatively, the taxpayer argues that the purchase of the aircraft qualifies for the temporary storage exemption, which is included in section 3-55 of the Act, and provides as follows:

> Multistate exemption. The tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:
>
> * * *
>
> (e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State. (35 ILCS 105/3-55(e).)

The taxpayer believes that when the plane was brought into Illinois to have the electronic equipment installed, it fell within this exemption. The taxpayer maintains that the aircraft was temporarily in Illinois while the necessary electronics were installed. After April 1, 1996, the taxpayer believes that there were relatively few flights where the plane landed in Illinois, and the landings in Illinois should be disregarded because most of them were for additional repair and warranty work.

In Nutrition Headquarters, Inc. v. Department of Revenue, 106 Ill.2d 58 (1985), the court found that catalogs that were brought into Illinois for the sole purpose of being labeled and then mailed throughout the United States were temporarily in Illinois. The court found that after the catalogs were temporarily stored here, they were physically attached to other property (the mailing labels), and then used solely outside of Illinois. The taxpayer contends that the instant case is similar because the repairs and the

installation of the electronics constitute physically attaching the plane to other property, and therefore the exemption applies.

The Department argues that the aircraft was not temporarily "stored" in Illinois because more than storage was done to the aircraft while it was here. The Department also contends that the plane was not physically attached to or incorporated into other property, and the installation of the electronic equipment did not alter the plane in any way. Finally, the Department argues that even if it is found that the plane was temporarily stored here, the aircraft was not subsequently used "solely" outside of this state.

I agree with the Department that this exemption does not apply to this case. In Nutrition Headquarters, Inc. supra, the court stated that the temporary storage exemption applies when the property is (1) acquired outside this State; (2) stored temporarily; and (3) used, either in the form in which it came into Illinois or as altered, solely outside this State. Nutrition Headquarters, Inc. at 61. In the present case, the aircraft does not meet either the second or third requirement. The installation of the electronics required extensive work for a long period of time and does not constitute a temporary storage of the aircraft. In addition, after the installation of the electronics and cabin interior, the plane landed in Illinois 65 times out of 228 flights. The aircraft was flown into Illinois more than any other State. Thus, even if it is assumed that the installation of the electronics, over a lengthy period of time, constitutes a temporary storage of the aircraft, after they were installed the plane was not used solely outside of Illinois. This disqualifies it for the exemption.

Non-resident Exemption

Finally, the taxpayer contends that it qualifies for the non-resident exemption in section 3-70 of the Act, which provides as follows:

> Property acquired by nonresident. The tax imposed by this Act does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here and who has used the property outside this State for at least 3 months before bringing the property to this State.
>
> **Where a business that is not operated in Illinois, but is operated in another State, is moved to Illinois or opens an office, plant, or other business facility in Illinois, that business shall not be taxed on its use, in Illinois, of used tangible personal property**, other than items of tangible personal property that must be titled or registered with the State of Illinois or whose registration with the United States Government must be filed with the State of Illinois, **that the business bought outside Illinois and used outside Illinois in the operation of the business for at least 3 months before moving the used property to Illinois for use in this State**.
>
> 'Acquired outside this State', whenever used in this Act, in addition to its usual and popular meaning, also means the delivery, outside Illinois, of tangible personal property that is purchased in this State and delivered from a point in this State to a point of delivery outside this State. (emphasis added, 35 ILCS 105/3-70.)

The taxpayer asserts that the aircraft was not required to be registered in Illinois, so that portion of the statute does not apply. The taxpayer contends that from December 1995 through March 31, 1996, the plane was not used in Illinois because it was brought to Illinois for purposes other than use by the taxpayer.

The taxpayer's arguments are legally flawed. This exemption applies to a business that initially operated in another State and moved to Illinois or opened an office, plant, or other business facility in Illinois. The record does not show that the taxpayer is that type of business. The stipulations indicate that the airplane was the taxpayer's principal asset from December 27, 1995 through April 30, 1997, but they do not indicate

the State that was the taxpayer's principal place of business. The taxpayer did not provide any evidence concerning the State in which it operates. It is not clear when the taxpayer's business allegedly moved to Illinois. Furthermore, even if the taxpayer moved its business from another State to Illinois, the evidence does not establish that the taxpayer used the plane outside Illinois for at least three months before it moved. The aircraft was in Illinois from December 27, 1995 to February 4, 1996. As previously stated, contracting to have the repairs done in Illinois constitutes a use in Illinois.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: June 12, 2003